

**REMARKS**

**STATUS OF THE CLAIMS**

Claims 1-32 are pending in the above-identified application. Claims 1, 3, 4 and 23 are currently amended. Claim 2 is cancelled. Claims 24-32 are withdrawn from consideration. Claims 1-12 and 16-23 are rejected.

**ELECTION/RESTRICTION**

Election or group I with traversed is noted.

**OATH/DECLARATION**

The Examiner indicates that the oath or declaration is defective because non-initialized and/or non-dated alterations have been made to the oath or declaration. Although to Applicant's knowledge, no alterations have been made, Applicant believes that the referenced defect may be that one of the inventors did not date the oath next to his signature. Accordingly a new Oath/Declaration signed and dated by inventor, Duane Dickins, who previously had not dated his declaration.

**REJECTIONS UNDER 35 U.S.C. § 112**

Claims 2 through 6 and 23 are rejected under 35 U.S.C. § 112 as being indefinite in failing to particularly point out and distinctly claim the subject matter of the invention. Claims 2 and 23 are amended herein to more clearly claim Applicant's invention in a manner that overcomes the rejections under 35 U.S.C. § 112. Reconsideration is respectfully requested.

**REJECTIONS UNDER 35 U.S.C. § 102**

The Examiner rejected claims 1, 7-9, 11, 12, 16-18, 20 and 22 under 35 U.S.C. § 102(b) as being anticipated by GB 2,268,068 to Davies ("Davies"). This rejection is respectfully traversed.

Claim 1 as amended, representative in part of the rejected claims, recites:

1. A bone segment positioning apparatus comprising:
  - a guide wire having a proximal end and a distal end;
  - a distal stop disposed on said guide wire about adjacent to said guide wire distal end;
  - a proximal stop disposed on said guide wire about adjacent to said guide wire proximal end;
  - a dilator having a tapered distal surface, an at least partially transverse proximal surface and a tubular inner surface defining a longitudinal through hole, said dilator being disposable on said guide wire wherein said guide wire extends through said through hole; and
  - a tube disposable over said guide wire and having a sidewall including a radially expandable anchor portion adapted for radial expansion upon compression of said tube between said at least partially transverse proximal surface and said proximal stop. (emphasis added)

The Examiner asserted that “Davies teaches a guide wire 2 having a proximal end and a distal end...” (Office Action, page 4, lines 2-3). Applicant respectfully submits that, contrary to the Examiner’s characterization, Davies discloses an intramedullary bone portion securing device comprising rod means adapted to received within a lengthwise extending bone cavity, at least two expansion devices mounted in tandem in association with the rod at spaced apart zones, actuating means adapted to apply compressive force to said expansion devices to increase traverse dimensions thereof whereby to grip the wall portions of said cavity. Davies makes no reference to the use of a guidewire. Davies does not teach or suggest the use of a wire as particularly claimed. Rather, element 2 of Davies is a “rod” (see, e.g., page 6, line 8).

The Examiner rejected claims 1-3, 7, 8, 10-12, 16-18, and 22 as being anticipated by US 4,808,163 to Laub (“Laub”). The Examiner asserted that “Laub discloses the use of a hollow needle to introduce guidewire 26 into vein 36. It is the examiner’s position that this needle would inherently include all of the structural features of the dialator of claim 2. Because any needle has a transverse dimension at its proximal end which would appear as an annulus when viewed from the proximal end, it is believed that the needle mentioned by Laub would thereby

have an at least partially transverse proximal surface.” (Office Action, page 5, line 19 – page 6, line 1).

Contrary to the Examiner’s characterization, Laub recites “A needle is inserted through the skin into vein 36. The guidewire 26 is inserted through the needle and advanced into vein 36. *The needle is removed...*” [Emphasis added by Applicant] (Col. 3, lines 23-25). Applicant respectfully submits that the needle of Laub is not part of the device disclosed therein but is simply referenced as a means for inserting the guidewire, after which the needle is removed. The needle discussed in Laub is not analogous in any way to Applicant’s claimed dialator, which includes an at least partially transverse portion against which the tube is compressed.

Further, Applicant respectfully submits that neither the stylet 21 or distal end 22 of the stylet disclosed in Laub teaches or suggests Applicant’s claimed dialator because the proximal surface thereof, even if it has a partially transverse portion, is located at the proximal end of the tube. Therefore no transverse portion of the stylet is provided against which the tube can be compressed. Applicant submits that the stylet of Laub performs a function that is completely different than the dialator of Applicant’s invention. That is because the tube of Laub has ribs that are expanded in their relaxed state due to heat treating of its constituent material, (see col. 2, lines 59 – 63) and the stylet 21 is used extend rather than compress the cannula tube and cause the ribs 18 to lie with the surface geometry of the cannula tube 11.” (Col. 3, lines 1-6). This stretching of the tube by the stylet is possible due to an interference fit between the stylet 21 and distal opening 13 of the tube. (see col. 2, line 65 – col. 3, line 1).

Since neither Davies nor Laub discloses each element of any of the claims as particularly set forth by the Applicant, and as currently amended, Applicant respectfully submits that the rejections under 35 U.S.C. §102 have been overcome and should be withdrawn. Reconsideration is respectfully requested.

### REJECTIONS UNDER 35 U.S.C. § 103

The Examiner rejected claims 19 and 21 under 35 U.S.C. 103(a) as being unpatentable over Davies in view of U.S 6,648,890 to Culbert (“Culbert”). This rejection is respectfully traversed.

Applicants respectfully submit Culbert teaches a bone fixation system that has neither a wire nor dialator as particularly claimed in both claims 19 and 21. Neither Davies nor Culbert alone or in combination teach or disclose all the elements of the claimed invention. For at least the reasons set forth above with respect to the rejections under 35 U.S.C. §102, Applicant respectfully submits that the rejections under 35 U.S.C. §103 have been overcome and should be withdrawn. Reconsideration is respectfully requested.

**CONCLUSION**

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, allowance is requested.

A petition for a one-month extension of time to respond through September 15, 2007, is enclosed herewith. If such petition is missing, please consider this paper such a petition. Should any fee be missing or insufficient, the Commissioner is hereby authorized to charge said fee to Seyfarth Shaw deposit account No. 50-2896.

Respectfully Submitted,

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Dated: September 17, 2006

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